

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMAL ATKINS,

Petitioner,

v.

MARY BERGHUIS,

Respondent.

Case No. 09-10711

Honorable David M. Lawson

Magistrate Judge Paul J. Komives

**ORDER ADOPTING REPORT AND RECOMMENDATION, DENYING THE
PETITION FOR A WRIT OF HABEAS CORPUS, AND DENYING A CERTIFICATE
OF APPEALABILITY**

Presently before the Court is the report issued on May 21, 2010 by Magistrate Judge Paul J. Komives pursuant to 28 U.S.C. § 636(b). Judge Komives recommends that this Court grant the respondent's motion for summary judgment, deny the petitioner's petition for a writ of habeas corpus and deny the petitioner a certificate of appealability because the petition is barred by the one year statute of limitations for filing habeas petitions in 28 U.S.C. § 2244(d).

Although the magistrate judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report, no objections have been filed. The parties' failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Federation of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the motion. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). However, the Court agrees with the findings and conclusions of the Magistrate Judge.

Accordingly, it is **ORDERED** that the Magistrate Judge's Report and Recommendation [dkt # 11] is **ADOPTED**.

It is further **ORDERED** that the respondent's motion for summary judgment [dkt. # 6] is **GRANTED**.

It is further **ORDERED** that the petitioner's petition for a writ of habeas corpus [dkt. # 1] is **DENIED**.

It is further **ORDERED** that the certificate of appealability is **DENIED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: June 15, 2010

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on June 15, 2010.

s/Teresa Scott-Feijoo
TERESA SCOTT-FEIJOO